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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re Reg. No.: 2,183,251
Mark: VELOCITY and design
Registration Date: August 25, 1998

Cancellation No. _____

VELOCITY DEVELOPMENT COMPANY, INC.,
a Georgia corporation,

Petitioner,

v.

ARICA INSTITUTE INC., a New York corporation,

Registrant.

PETITION FOR CANCELLATION



01-03-2003

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #10

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TRADEMARK TRIAL AND APPEAL BOARD

Petitioner, VELOCITY DEVELOPMENT COMPANY, INC. ("Velocity"), a Georgia corporation, with its principal place of business located at 2325 Lakeview Parkway, Suite 601, Alpharetta, GA 30004, believes that it is or will be damaged by Registration No. 2,183,251 and accordingly hereby petitions the Board to cancel such registration, in whole or in part, pursuant to 15 U.S.C. § 1064, and alleges:

**Velocity Development Company, Inc. and
The VELOCITY SPORTS PERFORMANCESM Mark**

1. Velocity adopted and has continuously used the mark VELOCITY SPORTS PERFORMANCESM since at least as early as January 1, 1999, in connection with physical fitness and sports-performance training for athletes, ranging from the serious amateur to the professional. Velocity focuses on developing athletic skills in the areas of speed, agility, coordination, strength, power, mobility, flexibility, and injury prevention. Velocity's core market is the student athlete between the ages of 8 and 20, including elite amateurs and aspiring professionals.

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2. Velocity has spent substantial sums in advertising and promoting its services under the VELOCITY SPORTS PERFORMANCE mark, and as a result of its efforts, Velocity has developed extensive goodwill in such mark.

3. On July 10, 2001, Velocity filed an application with the United States Patent and Trademark Office seeking registration of the VELOCITY SPORTS PERFORMANCE mark. Velocity's application, however, has been refused under Section 2(d) of the Trademark Act based upon a likelihood of confusion with the stylized VELOCITY mark shown in Registrant's U.S. Registration No. 2,183,251. Although Velocity disputes the Examining Attorney's position, Velocity has instituted this action to avoid the refusal as well as to avoid any likelihood of confusion between Velocity's mark and the stylized mark shown in Registrant's registration.

Arica Institute Inc. and the Cited Stylized VELOCITY Mark

4. Upon information and belief, Registrant, Arica Institute Inc. ("Arica"), is a non-profit mystical institute founded in 1968 in Arica, Chile, and is located at 10 Landmark Lane, Kent, CT 06757. Arica provides spiritual/religious education and training based upon Asian neo-spiritualism (including Zen, Sufism, Buddhism, Confucianism, Taoism and Kabbalah), with a focus on self-realization and enlightenment. As the Second Circuit Court of Appeals explained in a published opinion: "Arica training seeks to overcome the control and influence of the ego fixations so that the individual may return to the inner balance with which he or she was born." *Arica Institute, Inc. v. Palmer*, 970 F.2d 1067 (2nd Cir. 1992)

5. Arica has registered several marks for its services, including the subject VELOCITY logo, registered on August 25, 1998 in International Class 41 for educational services, namely conducting workshops, seminars and classes in the field of personal development.

Cancellation Based Upon Non-Use

6. Upon information and belief, Arica is not using the mark shown in the subject registration, particularly not with respect to the identified services. Through its investigation, Velocity has discovered that Arica's only use of the term "Velocity" appears to be in connection with the expressions "Velocity Meditations," "Velocity Initiation," and "Velocity Group Meditations."¹ In none of those instances is the term "Velocity" used as shown in the subject registration, and in all such instances, the expression identifies a particular meditation technique as opposed to general "educational services, namely conducting workshops, seminars and classes in the field of personal development." Consequently, to the extent it uses the registered mark at all, Arica only uses it to identify a particular meditation technique, not for general educational training as its registration erroneously implies.

7. Thus, to the extent Arica ever used the VELOCITY logo shown in its registration, Arica has apparently abandoned such mark. Alternatively, to the extent Arica never used the VELOCITY logo in association with the identified services, Arica's registration was obtained fraudulently.

Partial Cancellation Based Upon Overbroad Identification of Services

8. Even if Arica is somehow able to demonstrate that it uses the stylized VELOCITY mark as shown in the subject registration, the identification of services in such registration does not accurately describe Arica's services purportedly offered under the mark. Indeed, to the extent Arica

¹ It should be noted that in at least one promotion, Arica improperly uses the registration symbol ® in connection with the expression "Velocity Group Meditations." It is also interesting to note that in at least one publication, the expressions "Velocity Meditation" and "Velocity Initiation" are identified as service marks of Oscar Ichazo – *not* Arica. This raises an additional question as to who really owns the purported mark at issue.

uses the word “Velocity” in combination with other expressions, such use is limited to identifying a particular form of meditation, or at most, a special type of spiritual/religious mediation technique used to experience what Arica describes as the “Divine Sparkle.” Thus, at the very least, Arica’s registration should be narrowed to describe Arica’s actual services with more precision and to distinguish such services from Velocity’s sports-performance training and physical fitness related services.

The Harm to Velocity

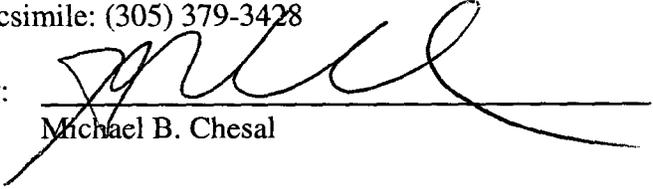
9. If Arica is permitted to continue to maintain its invalid registration, such registration may be deemed incontestable after five (5) years from the date of registration and Arica would thereby obtain an incontestable right to use its stylized VELOCITY mark in commerce. Further, the continued existence of such registration casts a shadow upon Velocity’s right to continue to use, develop and expand the use of its VELOCITY SPORTS PERFORMANCE mark in the United States as evidenced by the PTO’s refusal to register the mark. Arica’s registration is thus a source of damage and injury to Velocity.

WHEREFORE, Petitioner, Velocity Development Company, Inc., respectfully requests that Registration No. 2,183,251 be canceled based upon non-use, abandonment, or fraud, or alternatively, in order to avoid a finding of likelihood of confusion with Velocity’s proposed registration, that the identification of services in Registration No. 2,183,251 be restricted so as to exclude those services Arica is not actually rendering under the mark and to describe Arica’s services with more precision by accurately reflecting their religious and spiritual nature.

A duplicate copy of this Petition and the fee required by 37 C.F.R. § 2.6(a) are enclosed herewith.

Respectfully Submitted,

KLUGER, PERETZ, KAPLAN & BERLIN, P.A.
Attorneys for Petitioner
Miami Center, Seventeenth Floor
201 So. Biscayne Blvd.
Miami, Florida 33131
Telephone: (305) 379-9000
Facsimile: (305) 379-3428

By: 

Michael B. Chesal

of counsel:
Friedman, Rosenwasser & Goldbaum, P.A.
5355 Town Center Road, Suite 801
Boca Raton, Florida 33486
Telephone: (561) 395-5511
Facsimile: (561) 395-2648

CERTIFICATE OF EXPRESS MAILING

I HEREBY CERTIFY that this correspondence is being deposited with the United States Postal Service as Express Mail - Post Office to Addressee, in an envelope addressed to: Box TTAB FEE, Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513, on January 2, 2003, under Express Mail Label No. EVI89658933US


Janette Valdes